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DEPARTMENT OF TRANSPORTATION

[4910-9X-P]

Office of the Secretary

Letters of Interest for Credit Assistance under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program

AGENCIES: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of funding availability.

SUMMARY: The DOT's TIFIA Joint Program Office (JPO) announces the availability of a limited amount of funding in Fiscal Year (FY) 2012 to provide credit assistance. Under TIFIA, the DOT provides secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects of regional or national significance. Projects must meet statutorily specified criteria to be selected for credit assistance.

Because demand for the TIFIA program exceeds budgetary resources, the DOT is utilizing periodic fixed-date solicitations. This notice outlines the process that project sponsors must follow to compete to secure an invitation for Federal credit assistance for Federal FY 2012.

DATES: For consideration in the FY 2012 funding cycle, Letters of Interest must be submitted by 4:30 p.m. EST on December 30, 2011, using the revised form on the TIFIA Web site: http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm. Project sponsors that have previously submitted Letters of Interest for a prior fiscal year's

funding must resubmit them to be considered for funding in FY 2012, as outlined below.

ADDRESSES: Submit all Letters of Interest to the attention of Mr. Duane Callender via e-mail at: TIFIACredit@dot.gov. Submitters should receive a confirmation e-mail, but are advised to request a return receipt to confirm transmission. Only Letters of Interest received via e-mail, as provided above, shall be deemed properly filed.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact Duane Callender via e-mail at TIFIACredit@dot.gov or via telephone at (202)366-9644. A TDD is available at (202)366-7687. Substantial information, including the TIFIA Program Guide and application materials, can be obtained from the TIFIA Web site: <http://www.fhwa.dot.gov/ipd/tifia/>.

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I. Background

The Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat.107, 241, (as amended by sections 1601-02 of Pub. L. 109-59) established the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the U.S. Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. The TIFIA regulations (49

CFR Part 80) provide specific guidance on the program requirements.¹ On January 5, 2001, at 65 FR 2827, the Secretary of Transportation (Secretary) delegated to the Administrator of the Federal Highway Administration (FHWA) the authority to act as the Executive Agent for the TIFIA program (49 CFR § 1.48(b)(6)). The TIFIA JPO, a component of the FHWA Office of Innovative Program Delivery, has responsibility for coordinating program implementation.

II. Program Funding

In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144), which made a number of amendments to TIFIA including lowering the estimated project cost thresholds and expanding eligibility for TIFIA credit assistance. SAFETEA-LU authorized \$122 million annually from the Highway Trust Fund (HTF) for Fiscal Years (FY) 2005 to 2009 in TIFIA budget authority to pay the subsidy cost of credit assistance. As of the publication date of this notice, extensions of the surface transportation reauthorization act have been enacted continuing highway programs that were authorized through FY 2009, and the expectation is that Congress will reauthorize an equivalent amount of budget authority for the TIFIA program in FY 2012. Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years. The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like all funds subject to the annual Federal-aid obligation ceiling, the amount of TIFIA budget

¹ The TIFIA regulations have not been updated to reflect changes enacted in Public Law 109-59, SAFETEA-LU. Where the statute and the regulation conflict, the statute takes precedence. See the TIFIA Program Guide for updated program information.

authority available in a given year may be less than the amount authorized for that fiscal year.

After reductions for administrative expenses and application of the annual obligation limitation, TIFIA has approximately \$110 million available annually to provide credit subsidy support to projects. Although dependent on the individual risk profile of each loan, collectively, this budget authority could support approximately \$1.1 billion in annual lending capacity.

III. Eligible Projects

Highway, passenger rail, transit, intermodal projects, and intelligent transportation systems may receive credit assistance under TIFIA. Additionally, SAFETEA-LU expanded eligibility to private rail facilities providing public benefit to highway users, and surface transportation infrastructure modifications necessary to facilitate direct intermodal transfer and access into and out of a port terminal. See the definition of “project” in 23 U.S.C. 601(a)(8) and Chapter 3 of the TIFIA Program Guide for a description of eligible projects.

http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm).

IV. Types of Credit Assistance

The DOT may provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees. These types of credit assistance are defined in 23 U.S.C. 601 and 49 CFR 80.3. The TIFIA credit facility, which must be senior or parity lien in the event of bankruptcy, liquidation or insolvency, can be subordinate as to cash flows absent such an event. The maximum amount of TIFIA credit assistance to a project is limited to 33 percent of eligible project costs. Applicants may not include any of the fees

assessed by TIFIA, or costs related to the application process (such as charges associated with obtaining the required preliminary rating opinion letter referenced in section V), among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

V. Estimated Project Cost Threshold Requirements

Projects seeking TIFIA assistance must meet certain statutory threshold requirements. Generally, the minimum size for TIFIA projects is \$50 million of eligible project costs; however, the minimum size for TIFIA projects principally involving the installation of an intelligent transportation system is \$15 million. Each project seeking TIFIA assistance must apply to the DOT, and must satisfy the applicable State and local transportation planning requirements. Each application must identify a dedicated revenue source to repay the TIFIA loan, and each private applicant must receive public approval for its project as demonstrated by satisfaction of the applicable planning and programming requirements. These eligibility requirements are detailed in 23 USC 602(a) and Chapter 3 of the TIFIA Program Guide (http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm).

VI. Letters of Interest and Applications

Because the demand for credit assistance exceeds budgetary resources, the DOT is utilizing periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against the TIFIA program statute, regulation, and objectives.

Project sponsors seeking TIFIA credit assistance for FY 2012 must submit a Letter of Interest describing the project fundamentals and addressing the TIFIA selection criteria. For consideration in the FY 2012 funding cycle, Letters of Interest must be

submitted by 4:30 p.m. EST, via e-mail at: TIFIACredit@dot.gov on December 30, 2011, using the revised form on the TIFIA Web site:

http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm. Project sponsors that have previously submitted Letters of Interest for a prior fiscal year's funding must resubmit them using the FY 2012 form. For the purpose of completing its evaluation, the TIFIA JPO staff may contact an applicant regarding specific information in the Letter of Interest.

A public agency that seeks access to TIFIA on behalf of multiple competitors for a project concession must submit the project's Letter of Interest. The DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project.

After concluding its review of the Letters of Interest, the DOT will invite complete applications (including the preliminary rating opinion letter and detailed plan of finance). Letters of Interest submitted pursuant to this notice of funding availability do not need to include a preliminary rating opinion letter. However, projects invited to submit applications will be required to obtain a preliminary rating opinion letter. The senior debt obligations for each project receiving TIFIA credit assistance must obtain an investment grade rating from at least one nationally recognized credit rating agency, as defined in 23 U.S.C. 601(a)(10) and 49 CFR 80.3. If the TIFIA credit instrument is proposed as the senior debt, then it must receive the investment grade rating.

To demonstrate this potential, each application must include a preliminary rating opinion letter from a credit rating agency that addresses the creditworthiness of the senior debt obligations funding the project and concludes that there is a reasonable probability

for the senior debt obligations to receive an investment grade rating. The rating opinion letter should also provide an opinion on the default risk for the TIFIA instrument and indicative ratings for both the senior debt obligations and the TIFIA credit instrument. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance. More detailed information about these TIFIA credit opinions and ratings may be found in the Program Guide on the TIFIA Web site at:

http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/index.htm.

An invitation to apply for credit assistance does not guarantee DOT's approval, which will remain subject to evaluation based on TIFIA's statutory credit standards and the successful negotiation of all terms and conditions.

There is no fee to submit a Letter of Interest. For projects that are invited to apply, fees are charged to cover the cost of financial and legal advisory services. Additional fees will be charged after the loan is executed. More detailed information about these fees can be found in Chapter 4 of the TIFIA Program Guide:

http://www.fhwa.dot.gov/ipd/pdfs/tifia/tifia_program_guide_072511.pdf

VII. Selection Criteria

The eight TIFIA selection criteria are described in statute at 23 U.S.C. 602(b) and are assigned relative weights via regulation at 49 CFR 80.15. The criteria are restated below with clarifying language (where appropriate). The DOT may give priority to projects that enhance the TIFIA portfolio's geographic diversity and have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region. In addition, DOT may consider the project's readiness and timeline to proceed to

financial close on the TIFIA instrument. With respect to selection criteria that have multiple components, a project need not be well aligned with each of the components in order to be successful in that criterion overall. However, projects that are strongly aligned with multiple components will be the most successful in those criteria.

Furthermore, a project that has a negative effect on safety or environmental sustainability will need to demonstrate significant merits in other components in order to be selected for funding. Listed in order of relative weight, the TIFIA selection criteria are as follows:

(i) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system. This includes consideration of livability: providing transportation options that are linked with housing and commercial development to improve the economic opportunities and quality of life for people in communities across the U.S.; economic competitiveness: contributing to the economic competitiveness of the U.S. by improving the long-term efficiency and reliability in the movement of people and goods; and safety: improving the safety of U.S. transportation facilities and systems and the communities and populations they impact. Relative weight: 20 percent.

(ii) The extent to which TIFIA assistance would foster innovative public-private partnerships and attract private debt or equity investment. Relative weight: 20 percent.

(iii) The extent to which the project helps maintain or protect the environment. This includes sustainability: improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions, and reducing other transportation-related impacts on ecosystems; including the use of tolling or pricing structures to reduce or manage high

levels of congestion on highway facilities and encourage the use of alternative transportation options; and state of good repair: improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize lifecycle costs and use environmentally sustainable practices and materials. Relative weight: 20 percent.

(iv) The creditworthiness of the project. This includes a demonstrated capacity to repay the Federal credit assistance as well as a determination that the project has appropriate security features such as proper coverage ratios, rate covenants, and reserves, as applicable. Relative weight: 12.5 percent.

(v) The likelihood that TIFIA assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed. For purposes of this criterion, project sponsors should demonstrate that traditional sources of financing are not available at feasible rates, or that the costs of traditional financing would constrain their ability to deliver the project, or that delivery of this project through traditional financing approaches would constrain their ability to deliver additional components of their capital programs. Relative weight: 12.5 percent.

(vi) The extent to which the project uses new technologies, including intelligent transportation systems, to enhance the efficiency of the project. Relative weight: 5 percent.

(vii) The amount of budget authority required to fund the Federal credit instrument made available under TIFIA. Relative weight: 5 percent.

(viii) The extent to which TIFIA assistance would reduce the contribution of Federal grant assistance to the project. Relative weight: 5 percent.

Authority: 23 U.S.C. 601-609; 49 CFR 1.48(b)(6); 23 CFR Part 180; 49 CFR Part 80;
49 CFR Part 261; 49 CFR Part 640.

Issued on: October 31, 2011

Victor M. Mendez
Administrator

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